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302 NLRB No. 74

D--1906
Santa Clara, CA

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

CHIAPPE BUILDING MAINTENANCE CO.
d/b/a PIONEER BUILDING MAINTENANCE
COMPANY

Case 32--CA--11219

CHIAPPE BUILDING MAINTENANCE CO.
d/b/a PIONEER BUILDING MAINTENANCE
COMPANY AND FALCON BUILDING MAINTENANCE, INC.

32--CA--11397

and

SERVICE EMPLOYEES INTERNATIONAL
UNION, LOCAL 1877, AFL--CIO, CLC

April 8, 1991

DECISION AND ORDER

By Members Devaney, Oviatt, and Raudabaugh

Upon a charge filed by Service Employees International Union, Local 1877 (the Union) on June 25, 1990 [1] and another charge filed on September 13, and amended on October 26, the General Counsel of the National Labor Relations Board issued complaints and notices of hearing on July 31 and October 31 against Chiappe Building Maintenance Co. d/b/a Pioneer Building Maintenance Co. (Pioneer) and Chiappe Building Maintenance Co. d/b/a Pioneer Building Maintenance Co. and Falcon Building Maintenance Inc. (Falcon), collectively the Respondent, alleging that they, individually and collectively, have violated Section 8(a)(1), (3), and (5) of the National Labor Relations Act. On October 31, the General Counsel served an order consolidating cases on the

[1] All dates refer to 1990 unless otherwise noted.

Respondents by certified mail. On November 2, amendments to the complaints were issued and served on the Respondents by certified mail. Although properly served copies of the charges, complaints, and amendments, the Respondents have failed to file answers.

On December 17, the General Counsel filed a Motion for Summary Judgment and memorandum in support, with exhibits attached. On December 19, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the Motion for Summary Judgment should not be granted. The Respondents did not file a response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaints shall be deemed admitted if an answer is not filed within 14 days from service of the complaints, unless good cause is shown. The complaints state that unless an answer is filed within 14 days of service, ''all of the allegations in the Complaint shall be deemed to be admitted to be true and may be so found by the Board.'' Further, the undisputed allegations in the Motion for Summary Judgment disclose that by letter dated November 5, counsel for the General Counsel notified Lewis Gallimore, president of Respondent Pioneer and president of Respondent Falcon, that, unless answers were received by November 16, a Motion for Summary Judgment would be filed. As noted above, the Respondents have failed to file answers to the complaints and amendments to complaints and have failed to respond to the Notice to Show Cause.

In the absence of good cause being shown for the failure to file timely answers, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

Findings of Fact

I. Jurisdiction

Chiappe Building Maintenance Co. d/b/a Pioneer Building Maintenance Co. and Chiappe Building Maintenance Co. d/b/a Pioneer Building Maintenance Co. and Falcon Building Maintenance, Inc., collectively the Respondent, are California corporations, with an office and place of business in Santa Clara, California, engaged in the business of providing janitorial services to office buildings. In the course and conduct of its business operations, the Respondent, during the 12 months preceding issuance of the complaints, sold and shipped goods or provided services valued in excess of $50,000 directly to customers or business enterprises who themselves meet one of the Board's jurisdictional standards, other than the indirect inflow or indirect outflow standards. We find that Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Service Employees International Union, Local 1877, AFL--CIO, CLC, the Union, is a labor organization within the meaning of Section 2(5) of the Act.

II. Alleged Unfair Labor Practices

A. Alter Ego/Single Employer

About August 20, 1990, Respondent Pioneer ceased doing business under the name Chiappe Building Maintenance Co. d/b/a Pioneer Building Maintenance Co. and commenced operation of its business under the name Chiappe Building Maintenance Co. d/b/a Pioneer Building Maintenance and Falcon Building Maintenance, Inc. At all times material, Respondent Falcon has been a disguised continuance of Respondent Pioneer with common ownership, common

officers and/or directors, common control and direction of operations, common control and direction of labor relations policies, common business purpose, and common equipment, facilities, and employees.

By virtue of the acts and conduct described above, we find that Respondent Pioneer and Respondent Falcon are, and have been at all times material, alter egos and a single employer within the meaning of the Act.

B. The Unit and the Union's Representative Status

The following employees of the Respondent constitute a unit appropriate for collective-bargaining purposes within the meaning of Section 9(b) of the Act:

> All full-time and regular part-time janitors, waxers, utility persons, maintenance technicians, and window cleaners employed by Respondent in or out of its main offices located at 3233 De La Cruz Boulevard, #3, Santa Clara, CA; excluding all other employees, guards, and supervisors as defined in the Act.

Since on or about August 4, 1989, the Respondent Pioneer, in writing, lawfully recognized the Union as the exclusive collective-bargaining representative of the Respondent's employees in the unit described above and adopted a written collective-bargaining agreement, to cover those employees. The agreement runs by its terms until November 30, 1990. At all material times, by virtue of Section 9(a) of the Act, the Union has been, and is, the exclusive representative of the employees in the unit for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

At all times material, Lewis Gallimore has been the president of Respondent Pioneer and Respondent Falcon, and is now, and has been at all times material, a supervisor of the Respondent within the meaning of Section 2(11) of the Act and an agent of the Respondent within the meaning of Section 2(13) of the Act.

C. The Refusals to Bargain

The agreement provides, inter alia, for certain hourly wages; a union-security clause; dues checkoff (the ''Checkoff Provisions''); and a grievance/arbitration procedure (the ''Grievance Procedure'').

Since on or about February 1990, the Respondent has failed and refused and continues to fail and refuse to remit to the Union the dues which it has withheld from its employees' paychecks pursuant to their dues-checkoff authorizations.

Since on or about March 15, the Respondent has failed and refused and continues to fail and refuse to process grievances arising under the agreement.

About August 3, the Respondent, acting through its president, Gallimore, bypassed the Union and dealt directly with its employees in the unit at its Santa Clara, California facility by promising them a 40-cent-per-hour wage increase and agreeing to eliminate dues deductions from employees' pay, in order to undermine employee support of the Union.

In early August, the Respondent, again acting through Gallimore, announced to employees in a letter that it would cease honoring the checkoff provisions.

On August 29, the Respondent, by letter, repudiated the agreement. In late August, the Respondent Pioneer established Respondent Falcon as a disguised continuance of Respondent Pioneer in order to avoid its bargaining obligation with the Union. Thereafter Respondent Pioneer failed and refused to recognize or bargain with the Union as the representative of the unit employees, then ostensibly employed by Respondent Falcon.

On September 1, the Respondent ceased deducting dues from its employees' paychecks. On September 10, the Respondent implemented a 40-cent-per-hour pay

increase. The Respondent engaged in this conduct without prior notice to the Union and without having afforded the Union an opportunity to negotiate and bargain as the exclusive representative of the employees in the unit.

We find that by these acts, the Respondent has failed and refused, and is failing and refusing, to bargain collectively and in good faith with the Union as the exclusive collective-bargaining representative of the employees in the unit, in violation of Section 8(a)(5) and (1) of the Act.

D. The 8(a)(1) Violation

By bypassing the Union and dealing directly with its employees in the unit by promising employees a 40-cent-per-hour wage increase and agreeing to eliminate dues deductions from employees' pay, the Respondent has interfered with, restrained, and coerced, and is interfering with, restraining, and coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act in violation of Section 8(a)(1) of the Act.

E. The 8(a)(3) Violation

By establishing Respondent Falcon as an artifice and a disguised continuance of Respondent Pioneer in order to avoid its bargaining obligation with the Union, the Respondent has discriminated, and is discriminating, against its employees with respect to their hire, tenure, or other terms and conditions of employment, and thereby is discouraging membership in a labor organization. Accordingly, we find that the Respondent has violated Section 8(a)(3) and (1) of the Act.

Conclusions of Law

1. Respondent Pioneer (Chiappe Building Maintenance Co. d/b/a Pioneer Building Maintenance Company) and Respondent Falcon (Chiappe Building Maintenance Co. d/b/a Pioneer Building Maintenance Company and Falcon

Maintenance, Inc.) (collectively referred to as Respondent) are alter egos and a single employer within the meaning of the Act.

2. By the acts and conduct described above in section II,C, of this decision, the Respondent has failed and refused to bargain collectively and in good faith with the Union, and thereby has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1), and Section 2(6) and (7) of the Act.

3. By the acts and conduct described above in section II,D, of this decision, the Respondent has interfered with, restrained, and coerced employees in the exercise of the rights guaranteed them in Section 7 of the Act, and thereby has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act.

4. By the acts and conduct described above in section II,E, of this decision, the Respondent has discriminated against employees in regard to their hire, tenure, and terms and conditions of employment in order to discourage their union and other protected activities, and thereby has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(3) and (1) and Section 2(6) and (7) of the Act.

Remedy

Having found that the Respondent has engaged in certain unfair labor practices affecting commerce, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist from refusing to bargain with the Union in good faith, and we shall also order the Respondent to recognize and, on request, bargain in good faith with the Service Employees

International Union, Local 1877, AFL--CIO, CLC, as the exclusive collective-bargaining representative of the employees in the unit. We shall also order the Respondent to reinstate and abide by all terms and conditions set forth in its collective-bargaining agreement with the Union. Further, we shall order the Respondent to make bargaining unit employees whole for any losses of benefits that they may have suffered as a result of the Respondent's failure to comply with the collective-bargaining agreement. Employees shall be made whole for such losses in the manner prescribed in Ogle Protection Service, 183 NLRB 682 (1970), and Kraft Plumbing & Heating, 252 NLRB 891 (1980), with interest as computed in New Horizons for the Retarded, 283 NLRB 1173 (1987). Further, it is the Board's customary policy to require restoration of the status quo ante insofar as practical where a respondent has taken unlawful unilateral action. Accordingly, we shall order the Respondent, on request from the Union, to reinstate the wage rates which existed prior to the time it unilaterally changed the wage rates of the bargaining unit employees about September 10, 1990. Our Order, however, is not to be construed as requiring rescission of any wage increase previously granted unit employees. Finally, the Respondent shall be required to remit to the Union the authorized, contractually required union dues which it withheld or should have withheld from its employees' paychecks since February 1990,[2] with interest to be computed in the manner presribed in New Horizons for the Retarded, supra.

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[2] An employer does not violate the Act by failing to deduct union dues in the absence of a current collective-bargaining agreement requiring it to do so. See, e.g., Peerless Roofing Co., 247 NLRB 500, 505 (1980). Therefore, our Order does not require any remedial action by the Respondent in regard to union dues for the period after contract expiration.

ORDER

The National Labor Relations Board orders that the Respondent, Chiappe Building Maintenance Co. d/b/a/ Pioneer Building Maintenance Company and Chiappe Building Maintenance Co. d/b/a/ Pioneer Building Maintenance Company and Falcon Building Maintenance, Inc., its alter ego, Santa Clara, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to recognize and bargain in good faith with the Service Employees International Union, Local 1877, AFL--CIO, CLC, as the exclusive collective-bargaining representative of the Respondent's employees in the bargaining unit described below, by failing or refusing to abide by and by repudiating the collective-bargaining agreement effective August 4, 1989, through November 30, 1990, between Chiappe Building Maintenance Co. d/b/a Pioneer Building Maintenance Company and the Union. The appropriate unit is:

> All full-time and regular part-time janitors, waxers, utility persons, maintenance technicians, and window cleaners employed by Respondent in or out of its main offices located at 3233 De La Cruz Boulevard, #3, Santa Clara, CA; excluding all other employees, guards, and supervisors as defined in the Act.

(b) Bypassing the Union and dealing directly with any unit employees by promising them a wage increase and agreeing to eliminate dues deductions from their pay.

(c) Granting unilateral wage increases to its employees in the appropriate bargaining unit described above.

(d) Failing and refusing to continue in full force and effect its collective-bargaining agreement with the Union since February 1990, by announcing that it would cease deducting union dues and thereafter failing and refusing to remit to the Union the union dues moneys deducted from the pay of

its employees and by failing and refusing, since September 1, 1990, to deduct authorized union dues moneys from its employees' pay.

(e) Refusing to bargain collectively with the Union by failing and refusing to process grievances arising under the agreement in accordance with the grievance procedure in its collective-bargaining agreement with the Union.

(f) Establishing another company as an artifice and a disguised continuance in order to avoid its bargaining obligations with the Union.

(g) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Recognize, and, on request, bargain in good faith with, the Union as the exclusive representative of all its employees in the appropriate unit, with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

(b) On request by the Union, reinstate and abide by all terms and conditions of employment set forth in the collective-bargaining agreement which by its terms was effective until November 30, 1990.

(c) On request by the Union, reinstate the wage rates that existed for unit employees prior to about September 10, 1990; provided, however, that nothing here shall be construed as requiring rescission of any wage increases which previously have been granted to unit employees.

(d) Remit to the Union any and all union dues moneys which the Respondent deducted or should have deducted from the pay of its unit employees for the period beginning in February 1990, through November 30, 1990, with interest computed in the manner set forth in the remedy section of this decision.

(e) Process grievances filed under the collective-bargaining agreement since March 15, 1990.

(f) Make whole all bargaining unit employees, with interest, for any losses they may have suffered as a result of the Respondent's failure to comply with the collective-bargaining agreement, in the manner set forth in the remedy section of this Decision and Order.

(g) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amounts due under the terms of this Order.

(h) Post at its facility in Santa Clara, California, copies of the attached notice marked ''Appendix.''[3] Copies of the notice, on forms provided by the Regional Director for Region 32, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

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[3] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD'' shall read ''POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD.''

(i) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

Dated, Washington, D.C. April 8, 1991

Dennis M. Devaney, Member

Clifford R. Oviatt, Jr., Member

John N. Raudabaugh, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail and refuse to recognize and bargain in good faith with the Service Employees International Union, Local 1877, AFL--CIO, CLC, as the exclusive collective-bargaining representative of our employees in the following appropriate unit:

> All full-time and regular part-time janitors, waxers, utility persons, maintenance technicians, and window cleaners employed by Respondent in or out of its main offices located at 3233 De La Cruz Boulevard, #3, Santa Clara, CA; excluding all other employees, guards, and supervisors as defined in the Act.

WE WILL NOT fail or refuse to abide by and WE WILL NOT repudiate the collective-bargaining agreement effective August 4, 1989, through November 30, 1990, between Chiappe Building Maintenance Co. d/b/a/ Pioneer Building Maintenance Company and the Union.

WE WILL NOT bypass the Union and deal directly with any unit employees by promising them a wage increase and agreeing to eliminate dues deductions from their pay.

WE WILL NOT grant unilateral wage increases to our employees in the unit.

WE WILL NOT fail and refuse to continue in full force and effect our collective-bargaining agreement with the Union by failing and refusing to remit to the Union the union dues moneys deducted from the pay of our employees and by failing and refusing to deduct authorized union dues from our employees' pay.

WE WILL NOT refuse to bargain collectively with the Union by failing and refusing to process grievances arising under the agreement in accordance with the grievance procedure in our collective-bargaining agreement with the Union.

WE WILL NOT establish another company as an artifice and a disguised continuance in order to avoid bargaining obligations with the Union.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL recognize and, on request, bargain in good faith with, the Union as the exclusive representative of all our employees in the above-described appropriate unit with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

WE WILL, on request by the Union, reinstate and abide by all terms and conditions of employment set forth in the collective-bargaining agreement which by its terms was effective until November 30, 1990.

WE WILL, on request from the Union, reinstate the wage rates that existed for unit employees prior to on or about September 10, 1990; provided, however, that nothing here shall be construed as requiring rescission of any wage increases which previously have been granted to unit employees.

WE WILL remit to the Union the authorized union dues moneys deducted or which should have been deducted from the pay of our employees, for the period beginning in February 1990 through November 30, 1990, with interest.

WE WILL process grievances filed under the collective-bargaining agreement since March 15, 1990.

WE WILL make whole all bargaining unit employees, with interest, for any losses they may have suffered as a result of our failure to comply with the collective-bargaining agreement.

CHIAPPE BUILDING MAINTENANCE CO.
d/b/a PIONEER BUILDING MAINTENANCE
COMPANY AND ITS ALTER EGO d/b/a
PIONEER BUILDING MAINTENANCE
COMPANY AND FALCON BUILDING
MAINTENANCE, INC.

(Employer)

Dated _____ By _____
(Representative) (Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, 2201 Broadway, Second Floor, Oakland, California 94612-3017, Telephone 415--273--6122.